

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA, }  
Plaintiff, }  
-vs- }  
PETER ROGAN, et al., } Defendants.  
Case No. 02 C 3310  
Chicago, Illinois  
March 24, 2009  
9:00 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE JOHN W. DARRAH

## APPEARANCES:

For the Plaintiff:  
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United States District Court  
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1 THE CLERK: 02 C 3310, United States versus Rogan.

2 MR. SHORT: Good morning, your Honor. David Short  
3 on behalf of 410 Montgomery LLC.

4 THE COURT: Good morning, Mr. Short.

5 MR. STEWART: Good morning, your Honor. Joseph  
6 Stewart on behalf of the United States.

7 THE COURT: Good morning, Mr. Stewart.

8 MS. LA VINNE: Good morning, your Honor. Lindsay  
9 LaVine on behalf of claimant Jerry Whitlow.

10 THE COURT: Good morning, Ms. LaVine.

11 MR. SHORT: Your Honor, Erin Krejci is also here  
12 from our office, your Honor.

13 THE COURT: Good morning, Ms. Krejci.

14 MS. KREJCI: Good morning.

15 MR. STEWART: Your Honor, if you recall, the  
16 Court's ruling was to dismiss the summary judgment motion and  
17 ask the government to provide notice to all the potentially  
18 interested parties --

19 THE COURT: Pursuant to statute.

20 MR. STEWART: And we've done that. We filed our  
21 proof of service today by electronic filing.

22 The sending out of that notice to about two-dozen  
23 parties or so prompted claims by about six parties, including  
24 Mr. Whitlow, who is a garnishee as well and has been aware of  
25 these proceedings for over two years.

1           It's our intention now to move to strike the claims  
2 that have been filed and to renew our motion for summary  
3 judgment.

4           THE COURT: Has enough time passed, Mr. Stewart,  
5 that all interested parties would have had an opportunity not  
6 only to receive notice, but to come in here and appear, or --

7           MR. STEWART: Well, the first group, I want to just  
8 make clear that we take the position that they have already  
9 received notice.

10          But that being said, in response to the additional  
11 notice that we've sent out, we believe that -- because  
12 everybody was served --

13          THE COURT: That's what I'm talking about, the  
14 statutory required notice that I ordered --

15          MR. STEWART: We believe the safest position would  
16 be like the 1st or 2nd of April.

17          THE COURT: I'm sorry?

18          MR. STEWART: They were all served by the 12th of  
19 March, so we would add 20 days on to that, so it would be  
20 about the 1st or 2nd of April, we believe.

21          THE COURT: All right. Why don't we take a status  
22 date then early the second week of April. That way everyone  
23 will have been served and had the statutory required time to  
24 appear.

25          MR. STEWART: Okay.

1 MR. SHORT: Your Honor, if I may?

2 THE COURT: Sure.

3 MR. SHORT: Just to bring a couple procedural  
4 matters.

5 The government had filed that motion for summary  
6 judgment. We had started this process -- when I say we, 410  
7 Montgomery -- by filing a petition or a motion for release of  
8 those escrow funds. That's sort of what started it. Joe's  
9 response was the summary judgment motion.

10 Our position was, essentially, that our motion on  
11 that was our pleading on it and -- I guess the competing  
12 pleading with Joe's. That was filed probably a year ago.  
13 I'm just -- I don't need to resubmit that.

14 THE COURT: I would --

15 MR. SHORT: Okay. I just wanted to --

16 THE COURT: I don't want to tell you how to  
17 represent your client or what you should or should not do,  
18 but particularly in light of my ruling and my requirement  
19 that we comply with that statute, I think you might want to  
20 rethink exactly what you want to get on file to protect your  
21 client's interest under the statute that I found was  
22 controlling.

23 MR. SHORT: All right.

24 THE COURT: Why don't we show the previous petition  
25 is vacated without prejudice to resubmit. And you might want

1 to rethink exactly what it is you want to refile and how, and  
2 we can address that at the status date.

3 MR. SHORT: Okay.

4 THE COURT: So it will be continued to that date  
5 for status and for setting for the time to file pleadings.  
6 So no one will be prejudiced by not having something on file  
7 by that date.

8 MR. SHORT: Okay. Then I just raised, for the  
9 Court's attention -- I had mentioned this to Joe -- as I  
10 said, we've represented 410. The \$4 million or so was placed  
11 in escrow about two years ago. They retained our firm to  
12 follow through this process, and the money by which 410 would  
13 pay the firm has been held in escrow for two years. So I  
14 indicated to Joe that we would be filing a petition for  
15 release of some of those funds for payment of legal fees as  
16 normal business expenses.

17 Is there a date by which the Court would want me to  
18 file such a petition?

19 THE COURT: What's that date in April, Mel?

20 THE CLERK: April 8th.

21 THE COURT: The matter is continued to April 8th  
22 for status and for the setting for time for all parties to  
23 file pleadings.

24 MR. SHORT: I'm going to be out of town that day;  
25 I've got a trial in Alabama, your Honor. But I can -- I

1       don't know if I need to appear if I have our stuff, unless  
2       we're going to set something -- I don't have any new  
3       claimants --

4                   THE COURT: Do you want us to set it for another  
5       date, Counsel, or what are you asking --

6                   MR. SHORT: I'm not trying to be difficult, your  
7       Honor.

8                   THE COURT: I'm just trying to figure out what you  
9       want. What do you want me to do, set it over to the  
10      following week?

11                  MR. SHORT: That would be fine, your Honor.

12                  THE CLERK: April 15th at 9:00 a.m.

13                  THE COURT: Okay. So it will be set to April 15th  
14      at 9:00 a.m. for status and scheduling for the time for all  
15      parties to file pleadings.

16                  MR. STEWART: Very good, your Honor.

17                  MR. SHORT: Thank you, your Honor.

18                  MS. LAVINE: Thank you.

19                  THE COURT: You're welcome.

20      (Which were all the proceedings heard.)

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## 1 CERTIFICATE

2 I certify that the foregoing is a correct transcript  
3 from the record of proceedings in the above-entitled matter.

4  
5 /s/ Mary M. Hacker

April 15, 2009

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Mary M. Hacker  
Official Court Reporter

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